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SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1525TH MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 July 1996, at 3 p.m.

Chairman: Mr. BHAGWATI

later: Mr. AGUILAR URBINA

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ANNUAL REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY THROUGH THE ECONOMIC AND SOCIAL COUNCIL UNDER ARTICLE 45 OF THE COVENANT AND ARTICLE 6 OF THE OPTIONAL PROTOCOL

* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.1525.

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The public part of the meeting was called to order at 4 p.m.

ANNUAL REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY THROUGH THE ECONOMIC AND SOCIAL COUNCIL UNDER ARTICLE 45 OF THE COVENANT AND ARTICLE 6 OF THE OPTIONAL PROTOCOL (agenda item 8)

Chapter IX: Follow-up activities under the Optional Protocol (CCPR/C/57/CRP.1/Add.7, Parts I and II)

1. Mr. MAVROMMATIS (Special Rapporteur for the follow-up on views), presenting chapter IX of the draft annual report of the Committee, thanked the Communications Branch of the Centre for Human Rights, particularly Mr. Schmidt, who had provided him with all the necessary information and had continually consulted him in drawing up his report, and Mrs. Chanet, Rapporteur, who had made very useful comments and suggestions. Chapter IX reflected the Committee's discussions and concerns regarding how it expected States to follow up on its views. The chapter included information on the communications received, classified by country, the most recent follow-up activities, and a list of countries which were not cooperating with the Committee with regard to communications. It might be useful for the members of the Committee to know that Mr. Schmidt had drawn up a list of all communications received, which had been up to date at the beginning of the current session and which indicated, for each country, the number of communications received, the status of each communication and the Committee's views thereon. It was an extremely instructive document.

2. While it could not boast of having achieved spectacular results, the Committee could be sure that its efforts had borne fruit. There had been very encouraging responses from some States (for example, the Czech Republic); others (for example, France and Finland) had fully complied with the Committee's views; and still others (for example, Zambia) had shown a clear wish to make progress. The Committee's decision to make public the data on the follow-up to its views had also been a positive step, and the consultations that had been organized with the representatives of certain countries had been very useful; the members of the Committee responsible for those consultations had not limited themselves to reminding the representatives of States that a particular communication had been the subject of a decision, but had also tried to understand the problems faced by States and had suggested measures which would allow States to carry out their obligations, particularly with regard to the compensation of victims. Since Mrs. Chanet had rightly pointed out that it would be a good idea to define what the Committee meant by a "satisfactory reply", he had tried to deal with that matter. He therefore suggested adding to draft chapter IX the text found in document CCPR/C/57/CRP.1/Add.7/Part II. In his opinion, any measure taken by a State party could be considered satisfactory if it substantially conformed to the Committee's recommendation. There were, of course, countries which did not cooperate with the Committee, and it was amazing how ignorant some States were about the Optional Protocol, the commitments they had assumed in ratifying it and the nature and functions of the Human Rights Committee.

3. Two States with which the Committee continued to have problems were Jamaica and Trinidad and Tobago. While relations with Jamaica had improved considerably of late, there was still much to be done and perseverance was

called for. He had closely followed the cases concerning those two countries that had been dealt with by the Judicial Committee of the Privy Council, particularly when they involved death sentences. He had concluded that the Human Rights Committee must continue its efforts and that it was very important for it to try, to the extent possible, not to mention any differences of opinion and to seek to achieve unanimity in its decisions since, in the case of those two countries, a lack of unanimity considerably weakened the Committee's position.

4. The Judicial Committee of the Privy Council had recently taken a decision which showed the precariousness of the Committee's position in the case of those two countries. The case concerned a citizen of Trinidad and Tobago who was accused of intentional blows and wounding. The preliminary inquiry had been repeatedly postponed over a five-year period, after which the Department of Public Prosecutions had taken another five years to draw up charges. The lawyer (very probably under the influence of the Committee's decisions) had filed an appeal with the competent court, alleging that it would be a violation of due process for the accused to be tried 10 years after the events in question. The Appeal Court had quashed the indictment on the basis of those procedural delays, ordering that the victim should not be tried. The Attorney General had then appealed to the Judicial Committee of the Privy Council, which, without at any point invoking the Covenant, had ruled that the trial would not be unfair since nothing in the Constitution of Trinidad and Tobago required accused persons to be tried within a reasonable time and since it was for the trial judge to decide whether safeguards had been in place. That example showed that, in view of the positions taken by the Judicial Committee of the Privy Council, the Human Rights Committee still had far to go before its views would prevail.

5. Contacts had been established with the majority of other countries which had thus far failed to cooperate with the Committee, and it was permissable to hope that replies would be received in the near future.

6. Mr. POCAR conveyed his warm thanks to Mr. Mavrommatis and Mr. Schmidt for the enormous task that they had carried out, which clearly demonstrated the importance of the follow-up procedure to the Committee's views.

7. The new paragraph 4 proposed by the Special Rapporteur (CCPR/C/57/CRP.1/Add.7/Part II) was better than the one which currently appeared in document CCPR/C/57/CRP.1/Add.7/Part I, but it could be further improved. The text stated that satisfactory replies from States parties were those which responded in substance to the Committee's recommendations. That statement was too vague and could be applied to a variety of situations. Moreover, what exactly was meant by the words "in substance"? For example, when a State party merely promised to adopt legislation providing for compensation of victims of human rights violations, could it be considered to have responded "in substance"? He cited the case mentioned in paragraph 10 of the draft (CCPR/C/57/CRP.1/Add.7/Part I) and asked whether Colombia's response was, in that specific case, satisfactory. In his opinion, it was not. In general, a State party which merely informed the Committee that a bill had been placed before Parliament was making a repl; which, while encouraging, did not make it possible to determine what recourse was being offered to the

victims of human rights violations. In the case of Colombia, even if the bill was eventually adopted, that did not indicate what follow-up there would be to the Committee's recommendations.

8. The references to Colombia in paragraph 6 of document CCPR/C/57/CRP.1/Add.7/Part I also needed to be revised; the reference should be to paragraphs 16-18, not 15-17. The wording of paragraphs 17 and 18 of the draft should also be changed to make it clear which communications were referred to.

9. The Special Rapporteur had apparently suggested that States parties should consider awarding ex gratia compensation. Had he done so in cases where the Committee had requested the State party to compensate the victims? If so, he supported the Special Rapporteur's action; however, if the suggestion had been made in other cases, circumspection was called for.

10. Australia's reply, which was reproduced in Part I, paragraph 32 of the document, should not be included in the Committee's annual report to the General Assembly. Paragraph 6 of the same document stated that a number of States parties, including Australia, had provided the Committee with satisfactory replies, and it would not be appropriate to reproduce only Australia's positive reply, since that might suggest a certain partiality on the part of the Committee. In order to avoid the problems which might be created by the procedure followed in paragraph 32 of the report, the Committee should reproduce either all of the satisfactory replies received from States parties, or none of them.

11. Mr. EL SHAFEI also thanked Mr. Mavrommatis and Mr. Schmidt for the excellent document which the Committee had before it.

12. Paragraph 14 of that document stated that the Committee had decided, at its fiftieth session, that it "should draw the attention of States parties, at their biannual meetings, to the failure of certain States to implement the Committee's views and to cooperate with the Special Rapporteur in providing information on the implementation of views" (end of p. 9). He asked whether that had been done and, in general, whether the Special Rapporteur felt that that procedure was applicable in practice. Paragraph 14 also mentioned the Committee's decision that both positive and negative developments concerning the Committee's and the Special Rapporteur's follow-up activities would be highlighted in press communiqués, which would be issued once yearly after the summer session of the Committee (third subpara., p. 9). He did not recall that that had been done in the past but hoped that it would be done in the future. It would also be useful to specify the States parties which had cooperated with the Special Rapporteur and the Committee, and those which had not done so.

13. Finally, with regard to the functioning of the follow-up procedure, mentioned in paragraph 41 of the draft, he asked whether the Special Rapporteur had the impression that the Centre for Human Rights could, in the future, include in its budget funds to cover fact-finding missions to some countries, particularly in the case of States parties which were not cooperating with the Committee as they should.

14. Ms. EVATT thanked Mr. Mavrommatis and Mr. Schmidt for the document before the Committee, which was full of information and bore clear witness to the amount of work which had been done.

15. Pursuant to Mr. Pocar's comment on the list of States parties in paragraph 6 of the draft, she noted that, in a number of cases, there were no references to the relevant paragraphs of the draft (CCPR/C/57/CRP.1/Add.7/Part I). Those references should be added in order to make the list consistent. Furthermore, it was important for those reading the annual report of the Committee to be able immediately to see the connection between follow-up information and the relevant communications.

16. In her opinion, when the Committee received a satisfactory reply from, and an indication that its recommendations were being implemented by, a State party, it should mention that fact in the chapter of the annual report devoted to follow-up activities and should mention that that fact marked the end of the follow-up to the views associated with those cases. That would also have the advantage of making it easier for readers of the Committee's annual report to identify satisfactory replies by States parties.

17. Mr. KLEIN thanked Mr. Mavrommatis and Mr. Schmidt for the document that they had drafted. There was no doubt that it would be of great use to the Committee and would help to present it in a positive light to outsiders.

18. It was, of course, very important for States parties to have specific laws permitting them to implement the Committee's recommendations, but what happened when they lacked such laws? There must be many such cases and, while that type of legislation was not indispensable to the implementation of the Committee's recommendation that the author of a communication should be released, the matter was more complex when a request for compensation was involved. In principle, compensation of victims of human rights violations, required specific legislation. He wondered how the Special Rapporteur replied to States parties which said that they were willing to grant compensation but lacked the necessary legal instruments.

19. Mr. PRADO VALLEJO thanked the Special Rapporteur and Mr. Schmidt for the remarkable document before the Committee.

20. However, after reading that document, he had a few questions. He had the impression that a number of States parties seriously misunderstood their obligations under the Covenant and the Optional Protocol; that was clear from paragraph 19, for example, in the case of Equatorial Guinea. States parties to the Covenant and the Optional Protocol were required to give effect to the Committee's views, and the Committee should certainly give them more help in doing so than it had done in the past. It was important for States to receive guidance on how to proceed.

21. With regard to the follow-up to communication No. 514/1992, paragraph 17 of the draft indicated that the Permanent Representative of the State party in question, Colombia, had said that the author of the communication "was at liberty to initiate a procedure under the Colombian Civil Code to enforce her rights". That was not as simple as it seemed since, in order to enforce her rights, the author would have to request a new trial, perhaps before another

court, which was a very cumbersome procedure. Furthermore, according to the last sentence of paragraph 17, the State party had said that "the local police could also be requested to enforce the judicial orders in her favour". But how could the police, who were responsible for so many cases of torture and ill-treatment, be asked to implement the Committee's recommendations? There was clearly a problem, and the Committee should try to find additional means to ensure that its views were given effect. Many States parties seemed to need more technical assistance in the field of human rights, and the Committee might consider setting up a special programme for that purpose. Other bodies, such as the Office of the United Nations High Commissioner for Refugees, could also take such measures.

22. Paragraph 14 of the report (p. 9, fifth subpara. 5) stated that he himself had met with the representatives of the Peruvian and Colombian Government authorities in New York and had informed them of the Committee's wishes and concerns. That meeting had not produced any results, although Peru had recognized in its laws the need to implement the Committee's views. Under those circumstances, the Committee must do something more and could not merely confine itself to submitting a report to the General Assembly every year. An unsatisfactory situation must be remedied, and effective measures must be adopted for that purpose. It was a fact that some States, particularly in Europe, had changed their laws to reflect the Committee's decisions and bring their legislation into line with the Covenant, but such measures were far from universal among States parties. He felt that the Committee should study the problem and seek a solution.

23. Mrs. CHANET congratulated Mr. Mavrommatis and Mr. Schmidt on their remarkable work, which had clearly required many personal contacts and, in general, a great talent for perseverance and persuasion. The result was altogether convincing and it was clear that the Special Rapporteur's text had far more substance than the corresponding chapter of the Committee's previous annual report.

24. As Mr. Mavrommatis had said, she had made a number of observations to him. For example, she had said that the Committee's recent adoption of the new concepts of "satisfactory" and "unsatisfactory" replies had been a step forward; however, it must be explained what was meant by those terms. Mr. Mavrommatis had taken that comment into account, as was reflected in the proposed new wording of paragraph 4 as contained in document CCPR/C/57/CRP.1/Add.7/Part II.

25. However, she had not, perhaps, paid close enough attention to the drafting of the chapter and, in particular, she had not verified the way in which that concept was implemented in the case of each country. The text presented by the Special Rapporteur still included a number of distortions. She recognized, however, that it was impossible to give totally equal treatment to all States parties since their situations were never quite the same; different problems presented themselves, and States replies could not always be identical. She felt that mention of Australia's reply to the Committee was justified by the fact that Australia was a quite special case, which deserved to be cited as an illustration. However, the Committee must ensure that the reader did not receive the impression that the Committee's words implied a kind of code that could be interpreted as discriminatory.

For example, it would be better not to speak of "fully satisfactory" replies, as had been done in the case of Colombia. The Committee should avoid introducing degrees into its assessments.

26. Paragraph 6 stated that Hungary had submitted an "incomplete (preliminary) follow-up reply" to a decision of the Committee. Did that mean that, as a preliminary reply, it was satisfactory, or was the emphasis on its incompleteness? The Committee must choose between the two. With regard to Spain, paragraph 6 was not clear, and the State party must be placed into one of two categories (satisfactory or unsatisfactory reply). Finally, the text on Madagascar was enigmatic and should be rewritten in order not to give the impression that some of the Committee's procedures were conducted in secret.

27. Mr. FRANCIS said that he was pleased with the results of the special mission to Jamaica made by Mr. Mavrommatis, accompanied by Mr. de Zayas of the Centre for Human Rights. He had no doubt that, as a result, the Centre was better informed regarding human rights problems in Jamaica. He thanked the secretariat of the Centre for having provided, at the request of the Jamaican Government, a list of the cases concerning Jamaica that were still pending.

28. Mr. SHUTE (Chief, Petitions Unit) suggested that, since the Committee's resources were relatively limited, it would be in its interests to draw as extensively as possible on the experience of the special or thematic rapporteurs of the Commission on Human Rights who visited the countries concerned. Such cooperation could only be fruitful.

29. Mr. BAN said that, in future, the Committee might go beyond its follow-up activities under the Optional Protocol and, having heard the advice of the Special Rapporteur, suggest other measures to be taken so that dialogue with the State party could continue.

30. Mr. AMOR said that, while some improvements could, of course, be made to the follow-up activities under the Optional Protocol, the Committee had already obtained very encouraging results in that area, and he hoped that its future efforts would be increasingly fruitful.

31. Mr. ROSENTHAL said it was important to emphasize clearly the cases in which States parties had not given effect to the Committee's views. Furthermore, paragraph 41 of the draft, which stated that the Committee regretted that the Centre for Human Rights had not made provision in its budget for at least one follow-up mission per year, should be made stronger since that point was a particularly important one. He asked how the Special Rapporteur designated the members of the Committee who were assigned to verify some countries' follow-up to the Committee's views.

32. Mr. Aguilar Urbina took the Chair.

33. Lord COLVILLE said it was his understanding that, when the Committee transmitted its views to a State party, it also sent them to the author, who should, therefore, also be asked to state whether, in his opinion, the Committee's views had been duly implemented.

34. Ms. EVATT said that some non-governmental organizations (NGOs) which had met members of the Working Group on article 40 had expressed the wish to meet the Special Rapporteur for the follow-up on views since, in some cases, they had information which might be useful to him. It might, therefore, be a good idea for the Special Rapporteur to meet concerned NGOs.

35. Mr. MAVROMMATIS (Special Rapporteur for the follow-up on views) said he welcomed all the suggestions for improving the follow-up procedure, particularly those of Lord Colville and Ms. Evatt. Furthermore, as Mrs. Chanet had noted, the Committee was not required always to use uniform terminology.

36. He emphasized that, in its draft report, the Committee gave information on only some of the cases it had dealt with in order to provide as representative examples as possible of cases in which problems had been encountered or overcome. He also noted that in certain cases, such as those of Jamaica or Trinidad and Tobago, countries themselves undertook to follow up on the Committee's views.

37. In reply to Mr. Buergenthal's question, he said that he did not, strictly speaking, appoint members of the Committee to follow up on its views with regard to particular countries, but he asked some of them to help him on the basis, for example, of a country's language and legal system. For instance, he had asked Ms. Medina Quiroga to help him with communications involving Peru. In that regard, while retaining a certain flexibility, the Committee could make that method of work official if its members so decided.

38. Mrs. CHANET said she agreed with Mr. Pocar that the presentation of the list in paragraph 6 should be made uniform in order to prevent States parties from mistakenly believing that there had been discrimination in the evaluation of their replies. However, she did not agree with him that the selection made in paragraph 32 could appear discriminatory. For the first time, that chapter of the report gave the impression that the Committee was doing something and that its decisions did not, as many would have it, remain a dead letter in all cases; she thought that it was the examples given and the summaries provided, rather than the list included in paragraph 6, that would make the report more readable and give the impression that progress had been made in the area of follow-up.

39. However, it would, perhaps, be wiser to add a paragraph under the heading "Overview of positive examples of follow-up cooperation/replies" to explain that the Committee did not mean to imply that any one reply was more praiseworthy than others and to state that the intention was not to award prizes, but to show that the cooperation of States parties could take a number of forms: changes in the law, restoration of rights (for example, reinstatement in the civil service), reimbursement of a pension or, when a person could not be reinstated, direct compensation. A paragraph should also be added to explain what the Committee meant by a "satisfactory" or "unsatisfactory" reply; it could also be stated that the choice of examples of cooperation had been made on a thematic basis.

40. Mr. POCAR said he could not agree with what Mrs. Chanet had just proposed unless paragraphs 32 ff., were rewritten so as to present, on a

paragraph-by-paragraph basis, the different ways in which the Committee's views on communications were implemented, and unless each paragraph was followed by a reference, in parentheses, to specific cases illustrating the method in question (for example, changes in the law). There was nothing more selective than examples.

41. He therefore suggested removing from the list in paragraph 6 all of the cases to which the replies had been categorized as satisfactory. Since some of those replies had already been mentioned in the annual reports of earlier years, it would be sufficient for the mention of those cases to be accompanied by a reference to the relevant annual report. As for the cases which had never been referred to in an annual report, he insisted that they must all be mentioned, without distinction, in the section on cooperation. That would, of course, involve a certain amount of additional work for the secretariat, but there could scarcely be more than a dozen cases. If the Committee did not mention every communication which had been the subject of a State party reply indicating follow-up to the Committee's recommendations, he would prefer simply to delete paragraphs 32-38.

42. Ms. EVATT said she agreed that it was important for that part of the report to mention every case in which the Committee considered that the State party's reply concerning the action taken on the Committee's views terminated the follow-up activities for the case in question.

43. Mr. SCHMIDT (Centre for Human Rights) said the suggestion made by Mr. Pocar and Ms. Evatt could be followed by adding the replies of only three States parties: Argentina, Senegal and Spain.

44. Mrs. CHANET said that if States parties were to be dealt with on an equal basis, it was important not to reproduce, in quotation marks, the actual text of the replies of certain States parties, as had been done in paragraph 32 for Australia, while following a different procedure in other cases.

The meeting rose at 5.40 p.m.